

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Robert Joseph Benge,
Plaintiff,

v.

Charles L. Ryan, et al.,
Defendants.

No. CV 18-02544-PHX-MTL (CDB)

ORDER

In an August 29, 2019 Order, Magistrate Judge Camille D. Bibles issued an Order noting that Plaintiff, who was previously confined in the Arizona State Prison Complex-Florence, appeared to have been released from prison on August 9, 2019, and had not filed a notice of change of address. The Magistrate Judge ordered Plaintiff to show cause, on or before September 27, 2019, why this action should not be dismissed for failure to comply with the Court's October 19, 2018 Order, which expressly required Plaintiff to file a notice of change of address and, within 30 days of his release, either (1) notify the Court that he intended to pay the unpaid balance of his filing fee or (2) file a non-prisoner application to proceed in forma pauperis.

On September 23, 2019, Plaintiff filed a Notice of Change of Address identifying his new address. He did not notify the Court of his intention to pay the balance of the filing fee or file a non-prisoner application to proceed in forma pauperis. On October 18, 2019, the Magistrate Judge issued a Report and Recommendation recommending that this matter be dismissed without prejudice for failure to comply with a court order. On November 4,

1 2019, Plaintiff filed an Application to Proceed In District Court Without Prepaying Fees
2 or Costs (Doc. 24).

3 This Court “may accept, reject, or modify, in whole or in part, the findings or
4 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). It is “clear that
5 the district judge must review the magistrate judge’s findings and recommendations de
6 novo *if objection is made*, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d
7 1114, 1121 (9th Cir. 2003) (en banc); accord *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
8 1226 (D. Ariz. 2003) (“Following Reyna-Tapia, this Court concludes that de novo review
9 of factual and legal issues is required if objections are made, ‘but not otherwise.’”);
10 *Klamath Siskiyou Wildlands Ctr. v. U.S. Bureau of Land Mgmt.*, 589 F.3d 1027, 1032 (9th
11 Cir. 2009) (the district court “must review de novo the portions of the [magistrate judge’s]
12 recommendations to which the parties object.”). District courts are not required to conduct
13 “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*,
14 474 U.S. 140, 149 (1985); *see also* 28 U.S.C. § 636(b)(1) (“A judge of the court shall make
15 a de novo determination of those portions of the [R & R] to which objection is made.”).

16 The Magistrate Judge’s Report and Recommendation recommends dismissal of this
17 action without prejudice for failure to comply with the Court’s October 19, 2018 and
18 August 29, 2019 Orders. Plaintiff did not object to the Report and Recommendation, and
19 his Application to Proceed In District Court Without Prepaying Fees or Costs does not
20 contain any explanation for his failure to comply with the Court’s prior Orders.
21 Accordingly, the Magistrate Judge’s Report and Recommendation will be accepted.

22 **IT IS ORDERED:**

- 23 (1) The Magistrate Judge’s Report and Recommendation (Doc. 23) is **accepted**.
24 (2) The Second Amended Complaint (Doc. 17) and this action are **dismissed**
25 without prejudice for failure to comply with Court orders. The Clerk of Court must enter
26 judgment accordingly.

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(3) Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 24) is **denied** as moot.

Dated this 17th day of December, 2019.

Michael T. Liburdi

Michael T. Liburdi
United States District Judge